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TRANSCRIPT OF PROCEEDINGS

OCT 27 1994

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

IN THE MATTER OF:

SCRIPPS HOWARD BROADCASTING COMPANY
For Renewal of License of Station
WMAR-TV, Baltimore, Maryland

and

MM DOCKET NO. 93-94

FOUR JACKS BROADCASTING, INC.
For a Construction Permit for a New
Television Facility on Channel 2 at
Baltimore, Maryland

DATE OF HEARING: September 13, 1994

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Baltimore, Maryland
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Television Facility on Channel 2 at
Baltimore, Maryland

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The above-entitled matter came on for hearing
pursuant to Notice before Judge Richard L. Sippel,
Administrative Law Judge, at 2000 L Street, N.W., Washington,
D.C., 20554, in Courtroom No. 1, on Tuesday, September 13,
1994, at 9:00 a.m.

APPEARANCES:

On behalf of Scripps Howard Broadcasting Company:

KENNETH C. HOWARD, JR., ESQUIRE
SEAN H. LANE, ESQUIRE
RONALD L. WICK, ESQUIRE
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1 On behalf of Four Jacks Broadcasting, Inc.:

2 GREGORY L. MASTERS, ESQUIRE
3 KATHRYN G. SCHMELTZER, ESQUIRE
4 MARTIN LEADER, ESQUIRE
5 Fisher Wayland Cooper Leader & Zaragoza, L.L.P.
6 2001 Pennsylvania Avenue, N. W., Suite 400
7 Washington, D.C. 20006

8 On behalf of FCC Mass Media Bureau:

9 ROBERT A. ZAUNER, ESQUIRE
10 Mass Media Bureau
11 Federal Communications Commission
12 Washington, D.C. 20554
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I N D E X

<u>Witness</u>	<u>Direct</u>	<u>Cross</u>	<u>Redirect</u>	<u>Recross</u>
Mr. David D. S. Smith By Mr. Zauner		1989		
Mr. Robert E. Smith By Mr. Greenebaum		2009 2114		
By Mr. Zauner		2101		
Examination By Judge Sipple,	2109			

E X H I B I T S

	<u>Identified</u>	<u>Received</u>	<u>Rejected</u>	<u>Withdrawn</u>
<u>Scripps Howard:</u>				
Exhibit 35	2046	2049		
Exhibit 40:				
Tabs 1 - 10	1945	1945		
Tab 11	1958	1958		
Tabs 12 - 13	1958	1958		
Tabs 14 - 15	1964	1964		
Tab 16	1965	1965		
Tab 17	1966	1966		
Tabs 19 - 24	1975		1975	
Tabs 25 - 27	1978	1978		
Tab 28	1979	1979		
Tabs 29 - 31	1982	1982		
Tab 32	1983	1983		
Tab 33	1984	1984		
Tab 34	1986	1986		
Exhibit 46	2060	2061		
Exhibit 47	2087	2088		

Four Jacks:

Exhibit 27	2008
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Hearing Began: 9:01 a.m. Hearing Ended: 3:22 p.m.
Lunch Break Began: 12:05 p.m. Lunch Break Ended: 1:16 p.m.

P R O C E E D I N G S

1
2 JUDGE SIPPEL: As we left yesterday, the first order
3 of business this morning was going to be the documents. We're
4 going to work with Volume 40 documents. Does any-- well,
5 before I start that, let me say the reporter has just handed
6 me a note indicating that No. 39, which is a stipulation apart
7 from Exhibit 40, has not been received in evidence, and that
8 was a stipulation as to which there was no controversy at all.
9 So, for record purposes, the document which is marked Scripps
10 Howard Exhibit No. 39 for identification is received into
11 evidence at this time as Scripps Howard Exhibit 39.

12 Does anybody -- either Party have any, anything
13 preliminary they want to say about how they want to proceed on
14 this? We can take the documents one at a time or we can
15 consider them in categories. Are there any particular
16 documents, Mr. Greenebaum, that --

17 MR. GREENEBAUM: Your Honor, let Mr. Lane handle
18 this.

19 MR. LANE: Mr. -- well, Mr. Howard does.

20 MR. GREENEBAUM: Mr. Howard. I'm sorry.

21 JUDGE SIPPEL: Mr. Howard?

22 MR. HOWARD: Yes. Scripps Howard moves all the
23 documents, moves all the documents into evidence at this time,
24 Your Honor. I think it would be appropriate to -- we need to
25 get started -- with your objection --

1 JUDGE SIPPEL: Well, there's going to be objections
2 on relevancy, I know, as to perhaps all if not many of these.
3 I think I'd rather do these in categories. You identify some
4 categories --

5 MR. ZAUNER: Your Honor, something has just come up,
6 that that's there a conference that I -- maybe if we could
7 just make a brief appearance at. Would it be possible --
8 could we put this off for about five minutes? It's right next
9 door and I -- to just go and make a brief statement and, and
10 return?

11 JUDGE SIPPEL: Surely. You know, we'll, we'll --

12 MR. ZAUNER: It'll be just about a five-minute --

13 JUDGE SIPPEL: We'll, we'll recess until 9:15.

14 MR. ZAUNER: Thank you.

15 (Whereupon, a brief recess ensued.)

16 JUDGE SIPPEL: We're back in session. Mr. Zauner's
17 returned. I'd like to take these questions -- well, there is
18 a motion on the record by -- made by Mr. Howard. Mr. Leader,
19 do you want to respond to that?

20 MS. SCHMELTZER: What is it?

21 MR. LEADER: What is the motion? To receive these
22 in evidence?

23 JUDGE SIPPEL: Yes.

24 MR. LEADER: Well, with reservations. Surely.

25 JUDGE SIPPEL: What would the reservations be?

1 MR. LEADER: Relevancy to some of the documents.

2 JUDGE SIPPEL: I'd like to --

3 MR. LEADER: And the scope of some of the documents
4 too, Your Honor.

5 JUDGE SIPPEL: And the what?

6 MR. LEADER: And the scope of some of the documents.

7 JUDGE SIPPEL: Scope of some of the documents? All
8 right. Well, let's see if we can narrow it down to specific
9 documents.

10 I'd like to consider first -- this is all now the
11 tabbed exhibits in Exhibit 40 -- exhibits 1 through 10 --
12 Tabs, that is, 1 through 10. What would your position be with
13 respect to that evidence?

14 MR. LEADER: Well, my position is that they're,
15 they're irrelevant.

16 JUDGE SIPPEL: They're not relevant?

17 MR. LEADER: That's right. Especially the W-2s,
18 because there's no -- IRS doesn't provide a form for officer
19 compensation. And as Mr. Greenebaum brought out very ably
20 yesterday, officers and directors of companies for IRS pur-
21 poses are considered to be employees. So, I'm not sure what,
22 what those documents prove. There, there is no separate W-3
23 Form or W-5 Form that a company fills out to show compensation
24 for officers. They fill out W-2 Forms based on a provision of
25 the Internal Revenue Code that Mr. Greenebaum shared with us

1 yesterday.

2 JUDGE SIPPEL: Well, we have all that on the record,
3 but the relevancy is, is with respect to the disclosure that
4 was made as to his position -- as to -- well, the disclosure
5 that was made in connection with the, with the, with the
6 integration.

7 MR. LEADER: But that has nothing to do with that,
8 with all due respect.

9 JUDGE SIPPEL: All right.

10 MR. LEADER: All the form says is that -- the form
11 just reflects this is how we tell the Internal Revenue Service
12 what occurred. This has nothing to do with his integration
13 commitment. This has got nothing to do with what he considers
14 himself in his role --

15 JUDGE SIPPEL: Well, what --

16 MR. LEADER: -- with respect to his company.

17 JUDGE SIPPEL: What does? What, what, what evidence
18 would you say that would be --

19 MR. LEADER: I think his, his, his direct testimony
20 and his cross-examination.

21 JUDGE SIPPEL: Just his statements?

22 MR. LEADER: And surely we've had enough of that,
23 Your Honor.

24 JUDGE SIPPEL: Well, this has been used in connec-
25 tion with the cross-examination.

1 MR. LEADER: It doesn't mean that all cross-
2 examination is relevant. We objected considerably yesterday,
3 both Mr. Zauner and I, to the, to the relevancy of certain
4 cross-examination. And you said, well, it's cross-
5 examination, I'm going to let him ask it for what it's worth.
6 Well, I'm -- my position today is I don't think some of this
7 is worth very much.

8 JUDGE SIPPEL: Well, I don't remember using the word
9 "for what it's worth" -- the phrase "for what it's worth," but
10 I know what you're driving at. My question to you is you're
11 saying that the W-2 information and this tax information is
12 not relevant with respect to the issue that was added in the
13 case. You said that the relevant evidence that I should
14 consider is what the witnesses told us, what the witnesses
15 testified to.

16 And what other, what other evidence? I'm still -- I
17 wasn't able to follow you on the second leg of your, of your
18 point.

19 MR. LEADER: Well, I, I think -- did you -- let me
20 just -- I think that this line of inquiry, of colloquy, be-
21 tween us is irrelevant to the admissibility of these
22 documents. You know, you've got -- we've got 10 tabs in front
23 of us, and maybe we ought to talk about that and save -- you
24 know, what, what evidence there is to support our case and
25 what evidence there is to support Mr. Greenebaum's case when

1 we file our Findings.

2 JUDGE SIPPEL: Well, I'm trying to find out what
3 your focus of relevancy is. And then you've used a broad term
4 relevant -- that you're saying is irrelevant.

5 MR. LEADER: Well, I think perhaps that we could
6 flip it around. I can ask -- you can ask Mr. Howard how he
7 thinks these documents are relevant?

8 JUDGE SIPPEL: Well, we will. We will. But let me
9 hear from Mr. Zauner first.

10 MR. ZAUNER: Yeah. I, I think the first place to
11 start is to have the statement by Mr. Greenebaum as to why he
12 believes these documents to be relevant, and then, then we can
13 discuss and know what objections, if any, we have to them
14 based upon that statement.

15 JUDGE SIPPEL: Mr. Howard, are you going to -- is
16 Mr. Howard --

17 MR. HOWARD: Yes, Your Honor.

18 JUDGE SIPPEL: -- going to make the arguments?

19 MR. GREENEBAUM: Yes, Your Honor.

20 MR. HOWARD: The, the relevance is that these
21 documents, like, like Mr. Leader said, the IRS does not have a
22 separate category of forms for officers because the IRS, like
23 everyone else who uses the English language, treats officers
24 as employees of the company. And the -- thus these documents
25 are highly relevant because they show that Sinclair held it's

1 | in -- officers to be employees of that company. And that the
2 | -- it's also highly relevant because the four Four Jacks
3 | principals and the reintegrated principals in fact direct the
4 | -- what Sinclair holds itself -- holds out to be the, the
5 | facts, and thus they are directly responsible for this repre-
6 | sentation to the U. S. Government that they are employees.

7 | JUDGE SIPPEL: Mr. Leader, you're shaking your head.

8 | MR. LEADER: I'm shaking my head because that's --
9 | the reason that the IR-- that the Government considers them
10 | employees is because the Government, in a, in a code, because
11 | the Legislature has said officers and directors are employees,
12 | just as the Legislature could say that, that cows are, are
13 | horses. They may not be, but that's how we choose to
14 | categorize them for our purposes -- our filing purposes.

15 | JUDGE SIPPEL: So, you're -- is your position that
16 | the W-2 information is misleading?

17 | MR. LEADER: No. The W-2 -- my -- if the W-2
18 | information is correct. The W-- but, but, but I think that a
19 | W-- there is no form for reporting officer compensation or
20 | salaries apart from a W-2 Form. So, to say that the W-2 Form
21 | makes them employees is patently erroneous, because the
22 | Government has made, to let the I-- Internal Revenue Service
23 | doesn't have a W-- a form that just relates officers. It, it
24 | -- for its administrative convenience it has said officers and
25 | directors of companies are employees, and Mr. Greenebaum read

1 that to us yesterday.

2 JUDGE SIPPEL: All right. Is that -- that's your
3 position?

4 MR. LEADER: That's my position.

5 JUDGE SIPPEL: Mr. Zauner?

6 MR. ZAUNER: Your Honor, I think they're making a
7 general statement, that, that the evidence being submitted is
8 relevant, and the reason I say that, the definition of rele-
9 vant evidence is any -- is evidence having any tendency to
10 make the existence of any fact that is of consequence to the
11 determination of the action more probable or less probable
12 than it would be without the evidence. And I think this
13 evidence shows that in, that in the corporation, and for IRS
14 purposes at least, the principals of Four Jacks were consid-
15 ered as part of a group which is called "employees." And so,
16 therefore, it tends to make it more probable, at least, that
17 in fact they are employees. So, I think that, that this
18 evidence meets the test of relevancy as set forth in the
19 Federal Rules of Evidence.

20 So, I, I would not object generally to these docu-
21 ments come in. I do have one or two documents within the
22 group that I think should not be admitted. I would make
23 specific objections as to them. But as to a general objec-
24 tion, I would not, not object.

25 JUDGE SIPPEL: We're just talking now about Tabs 1

1 through 10.

2 MR. ZAUNER: 1 through 10 on Exhibit 40.

3 JUDGE SIPPEL: That's correct. Which are the ones
4 in 1 through 10 --

5 MR. ZAUNER: Okay.

6 JUDGE SIPPEL: -- that you have your problems with?

7 MR. ZAUNER: Well, the first one I have a problem
8 with is number 1, and that is this is not an individual tax
9 return. It is a corporate tax return. And as I -- as I
10 recall the testimony, the basis for offering this is to show
11 that there was a representation --

12 COURT REPORTER: Excuse me. I'm sorry. We have a
13 technical difficulty.

14 (Off the record. On the record.)

15 JUDGE SIPPEL: All right.

16 MR. ZAUNER: There was a representation that a
17 certain percent of time of Mr. David Smith and his brothers
18 was devoted to business. But as I think I may have stated at
19 the time Mr. David Smith was being cross-examined, we don't
20 know how that percentage of time to business was calculated.
21 We don't know what instructions accompany a U. S. Corporate
22 Income Tax Return. We don't know what the total time is
23 that's considered in determining the percent of time to busi-
24 ness. And, and I believe that this document, standing by
25 itself, does nothing to advance our cause in this proceeding.

1 JUDGE SIPPEL: Mr. Howard?

2 MR. HOWARD: Well, Your Honor, first, it is a
3 representation from the company that the four Officers and the
4 three integrated principals are employees in the company, so
5 it's certainly relevant. It sounds like Mr. Zauner's objec-
6 tion is more to -- in, in the manner of a -- suggesting a
7 limitation on the use of the evidence rather on -- than on its
8 relevance. With respect to that question, it also indicates
9 that whatever the instructions may be, it is clear evidence
10 that the company regarded the participation as employees of
11 these Officers to be a highly substantial part of their, of
12 their work, and thus it's -- it does go to prove that point.

13 JUDGE SIPPEL: I'm satisfied on both grounds with
14 respect to -- well, as to relevancy and as to sufficient
15 precision of the document together with the testimony to
16 permit it to come in as a cross-examination document; but,
17 again, it will be used for all purposes. So, your motion with
18 respect to Tab 1 of 40 is granted. That's in.

19 MR. LEADER: I just want the record to show that I
20 did not object to Tab 1.

21 JUDGE SIPPEL: You do not object to Tab 1? All
22 right. Thank, thank you, Mr. Leader.

23 MR. LEADER: No. It's irrelevant. It shows their
24 Officers and Directors.

25 JUDGE SIPPEL: All right. How about -- well, now,

1 is there another tab that you have --

2 MR. ZAUNER: I'm, I'm just checking to see if
3 there's anything else, Your Honor, in Tab 1 through 10.
4 No, Your Honor.

5 JUDGE SIPPEL: Nothing else?

6 MR. ZAUNER: Nothing else.

7 JUDGE SIPPEL: All right, then. I -- has the
8 witness been examined -- when I say the witness, Mr. David
9 Smith, has he been examined with respect to each of these
10 tabs? Can you --

11 MR. HOWARD: No, Your Honor.

12 JUDGE SIPPEL: He has not been?

13 MR. HOWARD: The -- some of the documents relate to
14 Fred and to Robert. He hasn't been examined with respect to
15 both -- number 6 and number 7.

16 MR. ZAUNER: But again, Your Honor, there's no
17 argument but that these are authentic documents --

18 MR. HOWARD: Here. They're the same.

19 MR. ZAUNER: -- and they're all of the same.

20 JUDGE SIPPEL: The subject matter has been testified
21 to --

22 MR. ZAUNER: --

23 MR. HOWARD: Yes, Your Honor.

24 JUDGE SIPPEL: All right, then. I'm satisfied,
25 again, on grounds of relevancy and reliability and I'm going

1 to receive exhibits 1 through 10 into evidence.

2 (Whereupon, the documents marked for
3 identification as Tabs 1 through 10 of
4 Scripps Howard Exhibit No. 40 were
5 received into evidence.)

6 JUDGE SIPPEL: Are, are there any other of the, the
7 documents in 1 through 10, Mr. Leader, that you would have no
8 objection to? You say you don't object to Tab 1.

9 MR. LEADER: I -- well, I, I think the rest are, are
10 irrelevant for the reason I stated earlier. I mean, I think
11 it would be relevant if Mr. Greenebaum presented Mr. Smith
12 with a W-10 Form which had on it officers -- said officers and
13 directors, and they said to Mr. Smith: if you're -- you know,
14 why didn't you fill this one out? I think that form would be
15 relevant. I don't think a W-2 or W-4 is for this purpose.
16 You've made your ruling.

17 JUDGE SIPPEL: All right. I'm going to turn to
18 Tab 11. This is the Employee Annual Return -- or Report of
19 the Employee Benefit Plan for Sinclair. Mr. Howard, would you
20 make a proffer of relevancy as to that document?

21 MR. HOWARD: Yes, Your Honor. As I believe is
22 reflected in the stipulation, this has to do with a 401(k)
23 Plan. They show that David is -- David Smith is a trustee of
24 this employee benefit plan.

25 MR. LEADER: That's the relevancy?

1 MR. HOWARD: Yes. It shows that Mr. Smith has
2 knowledge -- purports to have knowledge --

3 MR. LEADER: It doesn't show that.

4 MR. HOWARD: Well, he's a trustee of it.

5 MR. LEADER: It shows that he's a -- I mean, the --
6 we've, we've already stipulated, but if that's, but if that's
7 the showing of relevance, Your Honor, we've already stipulated
8 to that in Exhibit 39 -- not, not 39 -- 40. I mean, we said
9 the document speaks for itself and the signatures are genuine.

10 MR. HOWARD: The stipulation goes to their, their
11 participating in the 401(k) plan.

12 JUDGE SIPPEL: Mr. Zauner, what's the Bureau's
13 position on that exhibit?

14 MR. ZAUNER: I have no objection to it.

15 JUDGE SIPPEL: Mr. Howard, are you asking that
16 Exhibit 11 be received in evidence for anything beyond what's
17 in the stipulation at Exhibit 40?

18 MR. HOWARD: Yes, Your Honor. There's, there's been
19 some question as to what extent the, the integrated principals
20 have knowledge of their employee benefit plans of Sinclair.
21 In some cases they, they, they testified that they don't,
22 don't know what's in those plans, don't under-- don't --
23 didn't appreciate the eligibility requirements of those plans,
24 and it's highly relevant in that regard that Mr. David Smith
25 is in fact a trustee.

1 JUDGE SIPPEL: Well, he's been asked and answered
2 questions with respect to his knowledge on cross-examination.
3 So, with his testimony, what more is, what more is needed over
4 and above what's in the stipulation?

5 MR. HOWARD: It -- this goes to the credibility of
6 the answers on those, on those questions, Your Honor, with
7 respect to his understanding.

8 JUDGE SIPPEL: Well, I, I think we're, we're talking
9 in, in circles here because with the stipulation it comes in
10 for everything that it purports to be, and then you've asked
11 the witness some questions on it, which is going to show us
12 what his knowledge, interest, or whatever might be with
13 respect to the document. So, why is there -- why, why are we
14 concerned about a contest on this?

15 MR. HOWARD: The -- Your Honor, the stipulation does
16 not go to, to him being a trustee of this plan.

17 MR. LEADER: He signed it. It says here -- the
18 document speaks for itself. That's what the stipulation says,
19 that his signature is --

20 MR. HOWARD: But if --

21 MR. LEADER: -- genuine.

22 MR. HOWARD: But then you're, then you're arguing --
23 then the document is relevant. If the document comes in --

24 MR. LEADER: No. Oh, no. It's not relevant.

25 JUDGE SIPPEL: No, it's not relevant. It doesn't --

1 I mean, he's not conceding relevancy. But I tell you, it can
2 come in under the -- it can come into evidence under the
3 stipulation and we've had it tested with the witness. So,
4 it's going to be in evidence. If he wants to argue that it's
5 not relevant, he can argue that it's not relevant, I shouldn't
6 consider it. But it's in by virtue of the stipulation. It's
7 a different way of it coming in.

8 MR. ZAUNER: Now I'm getting a little confused. Can
9 we use it then in our Proposed Findings and Conclusions?

10 JUDGE SIPPEL: If it's in evidence -- anything that
11 comes in in evidence can be used --

12 MR. ZAUNER: And it's going to --

13 JUDGE SIPPEL: -- used in Proposed Findings.

14 MR. ZAUNER: And it's going to come in because it's
15 the subject of a stipulation?

16 JUDGE SIPPEL: It's, it's going to come in because
17 it's -- I'm -- I, I could receive this -- yes, because it's
18 the subject of a stipulation. It's being --

19 MR. ZAUNER: Then what are we doing?

20 JUDGE SIPPEL: -- received in evidence --

21 MR. ZAUNER: Then what are we doing here?
22 Everything goes in. Why don't we just move it all in and move
23 on to something else?

24 JUDGE SIPPEL: I -- this is what I'm trying to get
25 and I thought we, we --

1 MR. GREENEBAUM: That's why I don't understand what
2 we're --

3 JUDGE SIPPEL: You were asking --

4 MR. GREENEBAUM: -- doing. I thought it went in
5 when the stipulation went in.

6 JUDGE SIPPEL: Your --

7 MR. LEADER: No, no, no. It didn't go in for
8 relevance or weight.

9 JUDGE SIPPEL: Well, weight is --

10 MR. LEADER: Weight --

11 JUDGE SIPPEL: Weight is always an issue.

12 MR. LEADER: Right.

13 JUDGE SIPPEL: Weight, weight is always an issue.

14 MR. LEADER: But, but it did not go in for rele-
15 vance. It went in and we stipulated to avoid the line of
16 questioning on: is this the real 401(k) and is this your
17 signature. We stipulated those facts. That's what we stipu-
18 lated. Now, the reason that this is irrelevant is it's a --
19 it goes back to the same argument with respect to a W-2 and a
20 W-4 Form. The 401(k) plan is a 401(k) plan. Our law firm has
21 a 401(k) plan. I'm an owner of the law firm. Mrs. Schmeltzer
22 is an owner of the law firm. Our employees in the law firm
23 participate in the same plan. Baker & Hostetler has a 401(k),
24 and I'm sure that the partners there participate in the 401(k)
25 along with the employees.

1 So, the, the point is that -- the point I'm trying
2 to make is that you can't say that just because you have a
3 401(k) it's for employees only. It's for owners also.

4 JUDGE SIPPEL: But that's all argument. That's,
5 that's all argumentative with respect --

6 MR. LEADER: Well, it's not --

7 JUDGE SIPPEL: -- to how to use --

8 MR. LEADER: -- argumentative because they haven't
9 laid a foundation for what, what, what the criteria for 401(k)
10 plans are, and they're going to take -- they could take this
11 and argue that because it says "employees" that these fellows
12 are employees and can't participate because they're officers.
13 I don't know what they're doing.

14 JUDGE SIPPEL: Well, you're going to --

15 MR. HOWARD: May I answer, Your Honor, first?

16 JUDGE SIPPEL: That's what -- that's -- yes.

17 MR. HOWARD: There's an easy answer.

18 JUDGE SIPPEL: All right.

19 MR. HOWARD: And that is that Tab 28 is that 401(k)
20 plan in accord with the stipulation, and the 401(k) plan by
21 its own terms specifies that it's limited to employees.

22 JUDGE SIPPEL: This is all on cross-examination, you
23 know. I mean, this is what cross-examination is about and I
24 permitted the questions.

25 MR. LEADER: With all due respect, I can't agree

1 with that --

2 JUDGE SIPPEL: Well --

3 MR. LEADER: -- in this context.

4 JUDGE SIPPEL: -- there is flexi--

5 MR. LEADER: There is flexibility on cross-
6 examination.

7 JUDGE SIPPEL: Yes, there is. Yes, there is. And
8 you're --

9 MR. LEADER: I can see that.

10 JUDGE SIPPEL: -- looking for a form of precision
11 with respect to this evidence --

12 MR. LEADER: I'm looking for relevance --

13 JUDGE SIPPEL: -- that would invite --

14 MR. LEADER: -- Your Honor --

15 JUDGE SIPPEL: -- that --

16 MR. LEADER: -- to the issue that you added that has
17 to do with not with whether they're employees but with their
18 state of mind at the time they made a statement, and
19 submitting a 401(k) plan and all these documents in my mind is
20 irrelevant to that issue.

21 JUDGE SIPPEL: Well, I'm going to, I'm going to
22 overrule your objection. I'm going to receive it in as rele-
23 vant for purposes -- certainly for certain purposes of cross-
24 examination, but it can be used once it's in evidence for any
25 purpose. And I, I understand if you're -- you know, you're,

1 | you're trying to -- you, you want to be sure that you're not
2 | waiving any objection by going through it this way, and we can
3 | do it. I mean, that -- this is --

4 | MR. LEADER: If you --

5 | JUDGE SIPPEL: -- your prerogative.

6 | MR. LEADER: Well, I, I have a blanket objection
7 | here that many of these documents I believe are irrelevant and
8 | redundant.

9 | JUDGE SIPPEL: I --

10 | MR. LEADER: I think -- and I think -- the Mass
11 | Media -- I can't speak for the Mass Media Bureau, but I think
12 | it, it feels the same way. In the interests of time, I'm
13 | willing to let these in, but I don't want to be faced in a
14 | situation where the documents are taken out of context and
15 | cited for purposes for which they weren't admitted.

16 | JUDGE SIPPEL: Well, I know why that they're -- I, I
17 | certainly know the purpose for which they're being received in
18 | evidence. I mean, I'm right here as a -- as, as a principal
19 | to what's happening here today. I'm not going to be fooled by
20 | any of this. I don't see how. And --

21 | MR. LEADER: Well --

22 | JUDGE SIPPEL: -- you've got an opportunity to file
23 | reply pleadings with respect to this, and you're -- you can
24 | make these arguments again and again, as you're pointing out.
25 | If you feel that there's a weakness in this evidence, you

1 point out the weaknesses. But we're talking about -- even the
2 Bureau doesn't object on grounds of relevancy. I had one
3 objection to the first group that we considered for a very
4 specific reason. I, I'm, I'm, I'm trying to respond to you.
5 I don't think that I feel that I have to, but I'm trying to
6 because I want to see if there's a way, if I can, if I can
7 meet your concerns up front, that maybe we can move this along
8 a little bit faster.

9 MR. LEADER: Well, I -- once again, I think maybe
10 one way to do it is to have Mr. Howard tell us how he feels
11 it's relevant --

12 JUDGE SIPPEL: Well --

13 MR. LEADER: -- and what he's going to cite in the
14 document. I mean, for example, take the, take the 15 and --
15 14, 14 and 15.

16 JUDGE SIPPEL: Well, I haven't gotten to those yet.

17 MR. LEADER: I mean, are we going to suddenly be
18 confronted --

19 MR. HOWARD: Those, those are that are already
20 admitted into evidence.

21 MR. LEADER: No. No, they're not. See, see --
22 they're not admitted into evidence, Ken. That's, that's,
23 that's the whole point. If they're limited -- if they have
24 been limited -- pages of them have been limited in evidence
25 for certain purposes. The entire document's -- while the

1 entire document is in evidence, it has been -- the use of them
2 has been limited by the Judge's prior order.

3 JUDGE SIPPEL: That's correct. That's correct. It
4 does have the --

5 MR. HOWARD: Your Honor, I'd ask to, I'd ask to, to
6 see a citation to that document -- to those limitations.

7 JUDGE SIPPEL: Well, I'm not sure what it was --
8 whatever it was in phase one speaks for itself. But I don't
9 want to go beyond whatever I did in phase one.

10 MR. HOWARD: That's certainly fair.

11 JUDGE SIPPEL: And I did -- I know in one post-
12 hearing motion I admitted an entire Prospectus, or whatever
13 the best -- which was, as Ms. Schmeltzer pointed out yester-
14 day, that was inconsistent with how I had treated this evi-
15 dence in phase one. But -- yes, sir?

16 MR. HOWARD: My -- may, may we, may we address this
17 point briefly? I, I know it, it -- I agree entirely that we
18 shouldn't change what the rulings were at that time. I just
19 -- my recollection is that with respect to one of the docu-
20 ments where only certain pages were offered, certain pages
21 were admitted. With the other documents, where the entire
22 document was, was offered into evidence, my recollection is
23 that Your Honor accepted the entire document into, into evi-
24 dence and, and that that's without limitation.

25 JUDGE SIPPEL: Well --